

Replace the paragraph on page 6, line 11 to p. 7, line 1 with the following text

B1 --An essential ingredient of the premix is a preservative, suitably an antimicrobial paraben preservative such as those sold under the trade names Phenova W90, Phenoben W90, and Phenonip, by Georges Walther AG, or a mixture of phenoxyethanol, with one or more of methyl-, ethyl-, propyl-, and butylparaben. Other cosmetic preservatives such as iodopropinyl butylcarbamate, PEG-4 laurate, PEG-4 dilaurate can also be used. The concentration of the preservative is suitably from about 0.1% to about 0.7% wt. based on the formulation. Imidazolidinyl urea, suitably at a concentration of from about 0.1% to about 0.7% wt. based on the total formulation is also an essential ingredient along with the preservative.--

Please amend the claims as follows:

Claim 1, line3, change "liquid carrier," to --water or pasteurized or

B2 unpasteurized liquid whey carrier-- .

Delete claims 19-21.

### REMARKS

Claims 1-5, 7-12, 14, and 17-19 are in the application. An amendment comparison page is enclosed.

Claim 18 was rejected under 35 U.S.C. §112, second. The rejection is traversed, because it is not well taken. The enumeration of the alternatives in claim 18 is preceded by "one or more of ..." and the enumeration of the alternatives is properly joined in English with an "and" and not an --or-- before the last alternative ingredient of imidazolidinyl urea. If the examiner prefers, then the "or" may be deleted by examiner's amendment before "iodopropinyl."

Phillips' Example 5 prepares a foamable composition by admixing a 5% microfiltered whey protein isolate solution and ethanol and adds the mixture to mineral oil to obtain the foamable shaving cream. The present application makes it abundantly clear that the whey that it employs is rather sweet dry whole whey powder or sweet (optionally pH adjusted) whole liquid whey (page 4, lines 6-8), rather than the whey protein isolate solution employed by Phillips.

Notwithstanding the examiner's statement to the contrary, column 2, lines 39-45 do not teach the use of whey powder or liquid sweet whey (from rennet-coagulated cheese -page 2, lines 3-4), but only an aqueous whey solution which is not the same, because it is only a partial whey preparation. The amended language of claim 1, now specifies the liquid carrier as being water of liquid whey (based on page 6, lines 2-3) which now more clearly excludes any alcohol as well as oil, both of which are required to be used by Phillips. The step of heating the mixture is essential for the temperature-sensitive thermal treatment of the whey content to prevent occurrence of the Maillard reaction, especially under the critical temperature conditions recited by the subclaims, features that are notably absent from Phillips. The examiner's unsupported assumptions of what a skilled worker would or would not know, are entirely unwarranted and arbitrary.

The examiner picks and chooses various additive ingredients from disparate references which have nothing to do with whey-based cosmetics. By picking and choosing various components from other references dealing with entirely different cosmetic compositions, the examiner assumes that the use of some of those additives would fortuitously also be useful for the whole whey-based premix of the present invention,. That assumption, however, is entirely without any basis in fact and the references (as well as the rejection) fail to evidence any motivation for the combination of those disparate references. A motivation for the combination of references must be evident from the references themselves, and these references entirely fail to provide any evidence of such motivation. In fact, whey-containing compositions present their own unique compounding problems that are *sui generis* characteristic of whey-containing compositions, and the mere assumption that components of entirely unrelated cosmetic compositions would do the trick, is an entirely unwarranted and arbitrary application of impermissible hindsight and unpermitted extent of imputations of clairvoyance to persons skilled in the art. The mere mention of "motivation" on the top of p.5, does not *ipso facto* supply such motivation without further support for such an unsupported allegation and fanciful allegation.

The added Japanese reference No. 58192811 discloses preparing a humectant by inoculating lactic acid bacteria into a culture medium containing mammal milk, cultivating the mixture, separating a serum and heating it under reduced pressure. The present invention does not involve mammal milk, it does not involve cultivation an inoculum, and does not involve lactic acid bacteria. Therefore, the Japanese reference is entirely inapposite to the other references of record and to the prior art with which it is attempted to be combined. The Japanese reference heats the material to remove any unwanted odors from its

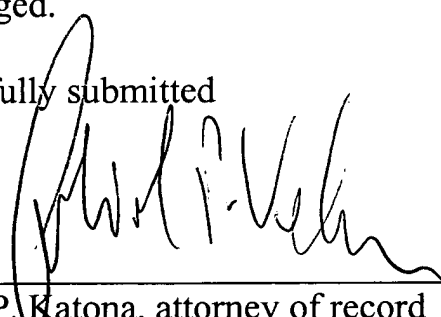
special, odoriferous composition. In the present invention no deodorization is required, because no such odoriferous components are employed as mother's milk. It is rather the avoidance of the Maillard reaction which results in the spoilage (browning) of the cream or lotion components of the Japanese reference when whole whey is used..

In summary, all references that employ whey in any fashion, take parts of a milk protein to utilize its globulin/albumin content, but not the entire, unfractionated, whole whey component. That latter methodology as employed by the present invention, does not only provide a simpler and lower cost technique, but also overcomes the stability problems associated with the use of a whole whey base. It is only in conjunction with using a stabilizer and imidazolidinyl urea, as is done in the present invention, that the use of the unfractionated, whole whey is enabled for the first time.

In view of the foregoing, reconsideration of the outstanding rejection, and the allowance of claims are respectfully urged.

Respectfully submitted

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It is hereby certified that this is being faxed on September 26, 2002.

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